

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DONALD A. HERL</b>	)	
Claimant	)	
VS.	)	
	)	
<b>TREGO COUNTY LEMKE MEMORIAL HOSPITAL</b>	)	Docket No. 251,867
Respondent	)	
AND	)	
	)	
<b>UTICA NATIONAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appealed Administrative Law Judge Bruce E. Moore's April 21, 2000, Order.

**APPEARANCES**

The claimant appeared by his attorney, M. John Carpenter of Great Bend, Kansas. The respondent and its insurance carrier appeared by their attorney, Jeffrey S. Austin of Overland Park, Kansas.

**RECORD**

The record consists of the transcript of the proceedings held before the Administrative Law Judge on April 20, 2000, and the documents contained in the Division of Workers Compensation administrative file.

**ISSUES**

Claimant fell while working for the respondent on March 16, 1998. As a result of the fall, he suffered injuries to his back, cervical spine, and head. The respondent provided claimant with medical treatment and temporary total disability benefits for those injuries. Claimant returned to part-time work for the respondent on February 23, 1999.

On June 17, 1999, claimant voluntarily executed a K-WC Form D, Settlement Agreement Final Receipt and Release of Liability, for the March 16, 1998, work-related

accident. In addition to the temporary total disability and medical benefits paid, the claimant was paid permanent partial general disability benefits based on a five percent whole body functional impairment rating. The K-WC Form D was filed with the Division of Workers Compensation on June 24, 1999.

On February 23, 2000, the claimant filed a Motion to Set Aside Settlement Agreement Final Receipt and Release of Liability. Claimant alleged the settlement was based solely upon a cervical injury sustained by claimant and gave no compensation for a closed head injury also suffered in the March 16, 1998, fall.

In conjunction with the filing of his motion to set aside the K-WC Form D, the claimant also filed an Application for Hearing and an Application for Preliminary Hearing for work-related accidents alleged to have occurred on March 16, 1998, and September 1, 1999. The Administrative Law Judge heard both claimant's motion to set aside the K-WC Form D and claimant's request for preliminary benefits in a hearing held on April 20, 2000. The Administrative Law Judge in the April 21, 2000, Order, that is the subject of this appeal, also decided both of these issues in the one order.

The Appeals Board, however, will separate the two issues and enter separate orders for each issue. This order will only address the Administrative Law Judge's decision to set aside the K-WC Form D. The Administrative Law Judge found the K-WC Form D should be set aside because claimant was only compensated for a cervical injury, and the claimant had proven he also sustained a closed head injury as a result of the March 16, 1998, fall.

Respondent, however, contends the K-WC Form D should not be set aside because it was properly entered into with the claimant accepting the settlement based on the medical report of C. Reiff Brown, M.D., which is attached to the K-WC Form D as required by statute<sup>1</sup> and regulation.<sup>2</sup> Furthermore, respondent argues that claimant's symptoms are not the result of a fall at work but are caused by a preexisting arachnoid cyst in the left frontal lobe of claimant's brain.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the briefs of the parties, the Appeals Board concludes the Administrative Law Judge's decision to set aside the K-WC Form D, Settlement Agreement Final Receipt and Release of Liability, entered by claimant on June 17, 1999, is an interlocutory order that the Appeals Board, at this juncture of the proceedings, does not have jurisdiction to review.

The Appeals Board only has jurisdiction for the review of "[a]ll final orders, awards, modifications of awards, or preliminary hearing awards under K.S.A. 44-534a and

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<sup>1</sup>See K.S.A. 44-527.

<sup>2</sup>See K.A.R. 51-3-4.

amendments thereto made by an administrative law judge . . . .”<sup>3</sup> The Appeals Board finds the Administrative Law Judge’s decision to set aside the K-WC Form D, Settlement Agreement Final Receipt and Release of Liability, entered into by the claimant on June 17, 1999, is not a final order, award, modification of award, or a preliminary hearing order as contemplated by K.S.A. 1999 Supp. 44-551(b)(1). The Appeals Board concludes the order is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. It is an order the Administrative Law Judge has authority to make, during the trial process, and the Appeals Board lacks jurisdiction to review the order until it is contained in a final order or award.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the respondent’s appeal from the April 21, 2000, Order as it relates to the Administrative Law Judge’s decision to set aside the K-WC Form D, Settlement Agreement Final Receipt and Release of Liability, entered by the claimant on June 17, 1999, in reference to the March 16, 1998, work-related accident, should be, and is hereby, dismissed.

### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: M. John Carpenter, Great Bend, KS  
Jeffrey S. Austin, Overland Park, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director

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<sup>3</sup>See K.S.A. 1999 Supp. 44-551(b)(1).